

84-765

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No.

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1984

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EVELYN HILLIER, Individually and as Administratrix of  
the Estate of Henry Hillier, Deceased,  
*Petitioners,*

vs.

SOUTHERN TOWING COMPANY, et al.,  
*Respondents.*

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**PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

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## **QUESTION PRESENTED**

Whether loss of society is an exception to the rule under general maritime law that pre-judgment interest applies to non-pecuniary damages recoverable for death resulting from injuries on territorial waters.



## TABLE OF CONTENTS

	Page
Question Presented for Review .....	i
Table of Contents .....	iii
Table of Authorities .....	iii
Opinions Below .....	1
Statement of Jurisdiction .....	1
Statement of the Case .....	2
Argument .....	3
Conclusion .....	9
Appendix:	
A. Decision of the Seventh Circuit .....	A-1
B. Order of U. S. District Court .....	A-8
C. Stipulation and Supplemental Stipulation Regarding Liability .....	A-12

## TABLE OF AUTHORITIES

American Zinc Co. v. Foster, 441 F.2d 1101 (5th Cir. 1971) .....	4
Complaint of Metcalf, 530 F.Supp. 446 (S.D. Tex. 1981) .....	5,9
Consolidated Machines, Inc. v. Protein Products Corp., 428 F.Supp. 209 (M.D. Fla. 1976) .....	5,6
Drachenberg v. Canal Barge Co., Inc., 621 F.2d 760 (5th Cir. 1980) .....	5,6,7,9

Elgin, J. & E. Ry. Co. v. Commercial Line, 317 F.Supp. 175 (N.D. Ill. 1970) .....	4,5
First Nat. Bank of Chicago v. Material Serv. Corp., 597 F.2d 1110 (7th Cir. 1979) .....	5
Flanigan v. Burlington Northern, Inc., 632 F.2d 880 (8th Cir. 1980) .....	4
Gardner v. National Bulk Carriers, Inc., 333 F.2d 676 (4th Cir. 1964) .....	5
Independent Bulk Transport, Inc. v. Vessel Morania Abaco, 676 F.2d 23 (2d Cir. 1982) .....	5
Moore-McCormack Lines, Inc. v. Richardson, 295 F.2d 583 (2d Cir. 1961) .....	5,9
Moragne v. States Marine Lines, Inc., 398 U.S. 375, 90 S.Ct. 1772, 26 L.Ed.2d 339 (1970) .....	4,9
National Airlines, Inc. v. Stiles, 268 F.2d 400 (5th Cir. 1959) .....	4,9
Petition of Marina Mercante Nicaraguense, S.A., 248 F.Supp. 15 (S.D.N.Y. 1965) .....	6
Sea-Land Services v. Gaudet, 414 U.S. 573, 93 S.Ct. 806, 39 L.Ed.2d 9 (1974) .....	4,7,8,9
Comment, U. Ill. L. Rev., 453 (1981) .....	6
22 Am.Jur.2d Damages § 108 .....	8

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Evelyn Hillier respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding August 3, 1984.

**OPINION BELOW**

The opinion of the Court of Appeals is reported at 740 F.2d 583 (7th Cir. 1984), a copy is attached as Appendix A. The opinion of the District Court is reported at \_\_\_\_ F.Supp. \_\_\_\_ (N.D. Ill 1983), a copy is attached as Appendix B.

**JURISDICTION**

The judgment of the Court of Appeals for the Seventh Circuit was entered August 3, 1984. Rehearing was not sought. This petition for certiorari is filed within 90 days of that date. Jurisdiction of this court is invoked under 28 U.S.C. § 1254.

## STATEMENT OF THE CASE

This suit arises from the September, 1979 death of Henry Hillier, a 23-year old seaman, as a result of an unfortunate work-related exposure to a cloud of dangerous gases. Hillier was survived by his widow and a young minor daughter. The defendants-respondents filed petitions for exoneration or limitation of liability in admiralty. Prior to trial, the defendants filed unqualified admissions of liability. The case was tried in Admiralty under general maritime law solely on the issue of damages. There was a contemporaneous companion jury trial against Southern Towing, which is not involved in the present appeal; the jury there served in an advisory capacity to the admiralty court herein.

The district court judge adopted the jury's assessment of damages at \$520,000.00 and entered judgment in that amount. The damages awards relevant to this petition are: \$172,743.65 for loss of society; \$5,000 for decedent's conscious pain and suffering; \$210,000 as the present value of the future loss of support (discounted to time of trial); and \$95,000 as the present value of future services. Also awarded were : \$35,000 for past support; and \$6,583.35 for past loss of services.

The district court awarded pre-judgment interest only on past loss of support and services, discounted future losses to the date of trial and withheld pre-judgment interest on the remaining damages for the stated reason that "the law does not allow for [it]." (App. B p. A-10) The Seventh Circuit Court of Appeals on review affirmed the trial court's conclusion that the law does not allow for pre-judgment interest on future pecuniary losses which had been discounted to their present value as of the date of trial and held: "[W]e reverse and remand that portion of the case denying the plaintiff pre-judgment interest for pain and suffering or for past loss of society." (App. A p. A-7) Plaintiff appeals from the portion of the judgment of the appellate court limiting pre-judgment interest to past loss of society.

## ARGUMENT

This writ should be allowed because the issue of recovery of pre-judgment interest on an award for loss of society for death resulting from injury on territorial waters under general maritime law has not been determined by this court and the absence of judicial guidelines for the application of pre-judgment interest has resulted in the denial of complete compensation for maritime injuries and death. In addition, the decision of the Court of Appeals below limiting pre-judgment interest to past loss of society is in conflict with decisions in other circuits.

The district court below specifically divided the awards for loss of support and for loss of services into past and future categories. (App. B p. A-9-10) Future losses were discounted and given present value at the time of trial. The trial court, however, did not make express findings of future and past loss of society or pain and suffering. Instead, it rendered lump sum damages both for loss of society and for pain and suffering (App. B p. A-10).

On appeal, the Seventh Circuit accepted the lump sum award as the basis for allowing a pre-judgment interest on pain and suffering, but it rejected the lump sum award for loss of society to the extent that it remanded for determination of pre-judgment interest based only upon "past loss of society." Under the facts and findings of this case, the decision of the Seventh Circuit is in conflict with the holdings and policy established by the United States Supreme Court and the courts of other circuits. Further, this case illustrates the need for standards for District Courts to follow in assessing pre-judgment interest on awards for loss of society in cases of wrongful death brought under general maritime law. The district court's unitary award for loss of society supports recovery of pre-judgment interest for the entire award, and not just for some past component of lost society.

The Supreme Court established a remedy for maritime wrongful death in the watershed case of *Moragne v. States Marine Lines Inc.*, 398 US 375, 90 S.Ct. 1772, 26 L.Ed 2d 339 (1970) by permitting recovery under the unseaworthiness doctrine for death in territorial waters. The *Moragne* court sought to "assure uniform vindication of federal policies." 398 US at 401, 90 S.Ct. at 1788, 26 L.Ed. 2d at 357. *Moragne* specifically did not resolve how damages would be determined under general maritime law.

Four years later, in *Sea-Land Services v. Gaudet*, 414 US 573, 94 S.Ct. 806, 39 L.Ed 2d 9 (1974), the Supreme Court held that under *Moragne* a longshoreman killed in inland waters could recover damages for loss of society. The *Gaudet* court explained: "[O]ur decision is compelled if we are to shape the remedy to comport with the humanitarian policy of the maritime law to show 'special solicitude' for these who are injured within its jurisdiction." 415 US at 588, 39 L.Ed 2d at 23.

Damages for loss of society are intangible and accrue at the moment of death. Loss of society, as noted in *Gaudet*, "[e]mbraces a broad range of mutual benefits each family member receives from the others' continued existence, including love, affection, care, attention, companionship, comfort and protection." 414 US at 585, 94 S.Ct. at 815, 39 L.Ed. 2d at 21. The determination of damages for loss of society turns mainly upon a good sense determination of what is just compensation, employing an analysis akin to that used in tortious injury cases. 414 US at 589-590, 39 L.Ed. 2d at 23-24. See *Moragne*, 398 US at 406, 26 L.Ed 2d at 360. Cf. *Flanigan v. Burlington Northern, Inc.*, 632 F.2d 880, 886 (8th Cir. 1980) (Pain and suffering not reducible to precise calculation).

As a rule, under general maritime law, pre-judgment interest is allowed on damage awards from the date of loss. *American Zinc Co. v. Foster*, 441 F.2d 1101 (5th Cir. 1971); *National Airlines, Inc. v. Stiles*, 268 F.2d 400, 405 (5th Cir. 1959); *Elgin*,

*J. & E. Ry. Co. v. American Commercial Lines*, 317 F.Supp. 175, 177 (N.D. Ill. 1970). Cf. *Independent Bulk Transport, Inc. v. Vessel Morania Abaco*, 676 F.2d 23 (2d Cir. 1982) (Abuse of discretion to deny pre-judgment interest except in exceptional circumstances); *Gardner v. National Bulk Carriers, Inc.*, 333 F.2d 676, 677 (4th Cir. 1964) (Not abuse to grant pre-judgment interest when award computed from date of death). Pre-judgment interest is the method by which the party who suffered the loss may recover the value of the actual loss suffered by compensating for the deficiency which arises during the period from the date the injury was sustained to the date of payment. It compensates for the use of the monetary award in the control of the defendant under the doctrine of *restitutio in integrum*. *Stiles*, 268 F.2d at 405.

In this context, it is important to note that, under general maritime law, whether a claim is unliquidated or liquidated is irrelevant to determination of pre-judgment interest. *First Nat. Bank of Chicago v. Material Serv. Corp.*, 597 F.2d 1110, 1121 (7th Cir. 1979), citing *Stiles*, 268 F.2d at 405. Thus, damage sustained of a non-pecuniary nature is recoverable as of a certain date, regardless of when the amount is judicially ascertained. Pre-judgment interest simply compensates for the difference in the value of the award at payment and the value of that award at the time of the injury or death.

Pre-judgment interest may be recovered upon an award for loss of society under general maritime law without division into future and past losses. *Drachenberg v. Canal Barge Co., Inc.*, 621 F.2d 760 (5th Cir. 1980); *Complaint of Metcalf*, 530 F.Supp. 446, 460-461 (S.D. Tex. 1981); *Consolidated Machines, Inc. v. Protein Products Corp.*, 428 F.Supp. 209 (M.D. Fla. 1976). Such treatment is consistent with the line of cases allowing pre-judgment interest from the time of death on awards for pain and suffering under the theory that pain and suffering are not reducible to precise calculation. See, e.g., *Moore-McCormack Lines, Inc. v. Richardson*, 295 F.2d 583, 594 (2d

Cir. 1961); *Consolidated Machines, Inc. v. Protein Prod. Corp.*, 428 F.Supp. 209, 240-241 (M.D. Fla. 1976); *Petition of Marina Mercante Nicaraguense, S.A.*, 248 F.Supp. 15, 25 (S.D.N.Y. 1965).

As distinct from the treatment of damages for pecuniary losses such as lost earnings or services, damages for loss of society are not discounted to the date of trial. Cf. *Consolidated Machines, Inc. v. Protein Prod. Corp.*, 428 F.Supp. 209, 230-231 (M.D. Fla. 1976) (loss of society requires different analysis from post-award pecuniary damages). Discounting is premised on the theory that the plaintiff who receives payment for losses which will not accrue until some future date would be over-compensated unless the sum is reduced to account for the interest he will receive upon investment of the award. Discounting establishes the amount of money that will produce the decedent's lost future earnings or support if the award is invested at prevailing interest rates. Comment, *U. Ill. L. Rev.* 453, 470 (1981). Compensable losses which cannot be reduced to a mathematical certainty, i.e. pain and suffering and loss of society, are the types of losses that accrue at the moment of death, are not subject to discounting, but are subject to pre-judgment interest.

The courts of other circuits have applied the measure of damages for loss of society without reducing the award to its present value. *Drachenberg v. Canal Barge Co., Inc.*, 621 F.2d 760 (5th Cir. 1980).

When the element of damage has accrued prior to the date of judgment, the compensation received at judgment or settlement necessarily is not an advance payment. Accordingly, when an award for loss of society is computed from the date of its accrual, upon the death of decedent, pre-judgment interest must be given if the plaintiff is to recover for the actual amount of her losses, which are equal to the amount of damage plus interest to the date of payment. This is the only method to remedy the

deficiency between the actual value of the award at payment and the value of that award at the time it accrued.

No federal court has ever suggested that intangible damages must be discounted to present value in wrongful death cases; such damages have always been undiscounted because of their very nature. In cases of death, loss of society accrues at the moment of death. It is fixed; to the extent that loss of society is capable of quantification under *Gaudet*, it follows that any delay between the time of death and time of receipt of compensation for the loss must be compensated for by allowing pre-judgment interest on the entirety of the award. No authority supports dividing loss of society into subparts which have already accrued and ones which have not yet accrued. To the contrary, the Fifth Circuit Court of Appeals, in contrast to the Seventh Circuit below, clearly allows pre-judgment interest on the entirety of an award. *Drachenberg v. Canal Barge Co., Inc.*, 621 F.2d 760 (5th Cir. 1980).

In the case at bar, the Seventh Circuit opinion concedes the lack of clarity in determining how and when pre-judgment interest is to be added to the damages award. (App. A p. A-5) The court also unequivocally states: "We cannot conclude the law precludes an award of pre-judgment interest on intangible damages." (App. A p. A-7) Then the court continues by remanding the case to the district court to determine "pre-judgment interest for pain and suffering or for *past* loss of society" (App. A p. A-7) (emphasis supplied). The appellate court's opinion requires by its terms that the award for loss of society must be divided into temporal components. Yet the trial court found that loss of society, like pain and suffering, is compensable in a lump sum, without reduction for present value. The trial court treated non-pecuniary losses differently from the pecuniary losses for which it made specific findings distinguishing past from future accrual of loss. The reason for this distinction is a practical one. The division into temporal units for non-pecuniary loss is an impossible determination for a judge or jury.

The appellate court's remand for computation of "past loss of society" illustrates the confusion which persists in determining pre-judgment interest under maritime law. The appellate court has gone too far in making a temporal distinction where none exists. The absence of standards for courts to follow in this area results in the inconsistent analysis and imposition of pre-judgment interest, as well as conflict among the circuits, as evidenced in the case at bar.

Damages for loss of society, like those for pain and suffering or disfigurement, "turn mainly upon the good sense and deliberate judgment of the tribunal assigned by law to ascertain what is a just compensation. . . . [i]nsistence on mathematical precision would be illusory." *Gaudet*, 414 US at 590; 39 L.Ed. 2d at 24 (citations omitted). A just estimation of loss of society upon death of a loved one does not turn upon any certain quantification, nor is it easily reducible to a yearly rate. The total injury to the family unit accrues upon the fatal event. Reducing loss of society into temporal components for the purpose of limiting recovery of pre-judgment interest would be an arbitrary and illusory transformation of the intangible loss into one of a pecuniary nature capable of precise mathematical quantification. As with an award for pain and suffering, an attempt to reduce to present worth the factfinder's common sense assessment of the value of the cost of society is both arbitrary and artificial. See 22 Am. Jur. 2d *Damages* § 108.

To the extent that its opinion requires a division of loss of society into past and future components, the Seventh Circuit has abandoned "the humanitarian policy of the maritime law to show 'special solicitude' for those who are injured within its jurisdiction." *Gaudet*, 414 US at 588, 39 L.Ed. 2d at 23. It has also arbitrarily reduced the recovery of the widow and child herein to an amount less than that to which they were entitled after waiting three and one-half years for compensation. The artificiality of this result is particularly poignant in the case at bar where there was no dispute as to the defendant's liability.

Defendant's admission of liability herein reinforces the fact that not only was the loss final on the day of death, but also this was not a case which required a trial to determine the culpable party; liability was admitted. Further, the decision is in conflict with the treatment of pre-judgment interest in the Fifth Circuit, which clearly allows pre-judgment interest on the entirety of the award.

The policy of solicitude as expressed in *Moragne* and *Gaudet*, and their progeny, *Stiles*, *Moore*, *Drachenberg* and *Metcalf*, requires rejection of the Seventh Circuit's analysis.

### CONCLUSION

For the foregoing reasons, it is imperative that this court issue its writ of certiorari to the United States Court of Appeals for the Seventh Circuit to eliminate the conflict among the Circuits and to establish specific standards for admiralty courts, clearly establishing that there is full pre-judgment interest for loss of society caused by wrongful death.

Respectfully submitted,

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## APPENDIX

**APPENDIX A**

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

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No. 83-1702

Evelyn Hillier, Individually and as  
Administratrix of the Estate of  
Henry Hillier, Deceased,  
*Plaintiff-Appellant,*

v.

Southern Towing Company,  
*Defendant and Third-Party Plaintiff,*  
and

United States of America,  
*Third Party Defendant,*  
and

In The Matter Of The Complaint Of  
Memphis Towing Company, a Corporation,  
for Exoneration from, or Limitation  
of Liability,  
*Appellee,*

and

In The Matter Of The Complaint Of  
C. F. Industries, Inc., as Bareboat  
Charterer and Owner *pro hac vice*  
of the Barge CF-105-B, for Exoneration  
from, or Limitation of Liability,  
*Appellee.*

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Appeal from the United States District Court for the  
Southern District of Illinois, Alton Division.  
Nos 80 C 5030 and 80 C 5331—**William L. Beatty, Judge.**

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ARGUED MAY 11, 1984—DECIDED AUGUST 3, 1984

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Before FLAUM, *Circuit Judge*, PELL, *Senior Circuit Judge*,  
and KELLAM, *Senior District Judge*. \*

FLAUM, *Circuit Judge*. The sole issue presented for review in this court is whether the district court, pursuant to its admiralty jurisdiction, erroneously denied the plaintiff prejudgment interest on the damages award for future loss of support and services, pain and suffering, and loss of society for the death of her husband. For the reasons which follow, we affirm in part and reverse in part.

I.

This suit stems from the accidental death of Henry Hillier in September 1979. The defendants-appellees filed Petitions for Exoneration or Limitation of Liability in Admiralty. Although defendants initially denied liability for plaintiff's wrongful death claims, prior to trial they filed unqualified admissions of liability. The case proceeded to trial only on the issue of damages. A companion civil case against Southern Towing Company was tried contemporaneously before a jury and the same jury served in an advisory capacity for the admiralty claims.<sup>1</sup>

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\* Honorable Richard B. Kellam, Senior District Judge for the Eastern District of Virginia, is sitting by designation.

<sup>1</sup> For related litigation see *Hillier v. Southern Towing Co.*, 714 F.2d 714 (7th Cir. 1983).

After trial the jury assessed the plaintiff's damages at \$520,000. The district judge, sitting in admiralty, adopted the jury's assessment and entered judgment against defendants-appellees in that amount. The damages were broken down as follows: \$35,000 for past support; \$210,000 as the present value of the future loss of support (discounted to time of trial); \$95,673 as the present value for future services; \$6,583.35 for past loss of services; \$5,000 for decedent's conscious pain and suffering; and \$172,743.65 for loss of society. After extensive briefing on the issue, the district court awarded prejudgment interest on past loss of support and services but denied prejudgment interest on the damages for future loss of support and services and on damages for pain and suffering and loss of society. Plaintiff appeals from the judgment of the district court.

## II.

Upon a review of the case law cited by the parties it is evident that there are "well-established" rules that, upon further investigation, are not that "well-established" in actuality. Plaintiffs assert that the propriety of awards of prejudgment interest in admiralty cases is clearly settled.<sup>2</sup> *Masters v. Transworld Drilling Co.*, 688 F.2d 1013 (5th Cir. 1982). *McCormack v. Noble Drilling Corp.*, 608 F.2d 169 (5th Cir. 1979). The decision of whether to award prejudgment interest lies within the sound discretion of the district court; however, it is an abuse of discretion to deny prejudgment interest absent "peculiar circumstances" justifying denial. *Noritake Co., Inc. v. M/V Hellenic Champion*, 627 F.2d 724 (5th Cir. 1980); see also *First National Bank of Chicago v. Material Service Corp.*

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<sup>2</sup> Federal courts sitting in admiralty have generally been favorable to awards of prejudgment interest and there is a relatively separate body of admiralty case law dealing with the issue. *First National Bank of Chicago v. Material Service Corp.*, 597 F.2d 1110 (7th Cir. 1979); *National Airlines v. Stiles*, 268 F.2d 400, 405 (5th Cir. 1959). See also Comment "Prejudgment Interest: Survey and Suggestion" 77 Nw. U.

“Peculiar circumstances” have been found to justify denial of prejudgment interest in circumstances where, for example, the plaintiff improperly delays the pursuit of a claim; or where there is a genuine dispute over a good faith claim in situations of mutual fault. *Noritake*, 627 F.2d at 728. The existence of “peculiar circumstances” is a factual issue and is reviewed on the basis of a “clearly erroneous” standard. *Id.* at 729. If the determination is not clearly erroneous, the appellate court reviews the award or denial of prejudgment interest for abuse of the trial court’s discretion. *Id.*

The other “well-established” rule in admiralty cases, cited by defendants, is that the doctrine of *restitutio in integrum* controls the determination of the appropriateness of the award of prejudgment interest. The doctrine of *restitutio in integrum* provides that a plaintiff is to be placed in the position previously enjoyed prior to the time he or she sustained damages; the plaintiff is to be made whole, in monetary terms. See *Petition of the City of New York*, 332 F.2d 1006 (2d Cir. 1964); *National Airlines v. Stiles*, 268 F.2d at 405. Defendants suggest that plaintiff has already been made whole by the award and, therefore, prejudgment interest was appropriately denied.

These two “well-established” doctrines are not mutually exclusive, rather, the two doctrines complement one another. Prejudgment interest has often been awarded to recovering plaintiffs in order to award “fair and just compensation for the pecuniary loss sustained” thereby making plaintiffs whole. *First National Bank of Chicago v. Material Service Corp.*, 597

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L. Rev. 192, 214 (1982). The rationale for awarding prejudgment interest was that such an award fairly and completely compensated the party sustaining damages because the damaged party lost the use of the ship as well as the use of the damages money prior to judgment. The general admiralty rule favoring awards of prejudgment interest has also been expanded to wrongful death claims and personal injury claims under the Death on the High Seas Act, 46 U.S.C. § 761 *et seq.*, and under the Jones Act, 46 U.S.C. § 688. *McCormack v. Noble Drilling Corp.*, 608 F.2d 169 (5th Cir. 1979); *National Airlines v. Stiles*, 268 F.2d at 400.

F.2d at 1121; *National Airlines v. Stiles*, 268 F.2d at 405. The award of prejudgment interest is only designed to compensate a plaintiff and is not awarded as a penalty. *Noritake*, 627 F.2d at 728. The real dispute arises in the interpretation of the doctrine of *restitutio in integrum* and how courts assess damages.

While it is clear that an award of prejudgment interest in admiralty is appropriate, what is unclear is how and when prejudgment interest is to be added to the damages award. See generally *Annot.*, 34 A. L. R. Fed. 126 (1977). Several courts, without much discussion have awarded prejudgment interest on the entire damages award. See *Drachenberg v. Canal Barge Company*, 621 F.2d 760 (5th Cir. 1980); *McCormack v. Noble Drilling Corp.*, 608 F.2d 169 (5th Cir. 1979). Other courts have tried to calculate damages more precisely by dividing damages into past and future losses. These courts have discounted the present value for future losses to the date of trial and awarded prejudgment interest only for those losses accruing prior to judgment. *Petition of the City of New York*, 332 F.2d at 1008-9; *Red Star Towing & Transportation Co., Inc. v. Cargo Ship "Ming Giant"*, 563 F. Supp. 224 (S.D. N.Y. 1983); *Hamilton v. Canal Barge Company, Inc.*, 395 F. Supp. 978 (E.D. La. 1975); *Petition of Marina Mercante Nicaraguense, S.A.*, 248 F. Supp. 15 (S.D. N.Y. 1965), *modified on other grounds*, 364 F.2d 118 (2d Cir. 1966), *cert. denied*, 385 U.S. 1005 (1967). Cf. *In Re Air Crash Disaster Near Chicago*, 644 F.2d 633 (7th Cir. 1981).<sup>3</sup>

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<sup>3</sup> *In Re Air Crash Disaster Near Chicago*, while not directly relevant because it is a diversity case rather than an admiralty suit, is useful as an example of how damages may be calculated. In that case, the district court instructed the jury to calculate the present cash value of plaintiff's damages to be computed as of the date of death. The district court awarded prejudgment interest to bring "death value" to present value as part of plaintiff's "fair and just compensation." This Court affirmed the award of prejudgment interest but instructed that in future cases juries should be instructed to calculate both future and past losses to the date of trial thereby precluding the need to award prejudgment interest. *Id.* A district court, sitting in admiralty, could follow the same formula.

In turning to the facts of this case, we note that the district judge (and the advisory jury) divided damages for support and loss of services into future and past components. Another aspect of the damages award, loss of society, was not divided into the same components. The judge granted prejudgment interest only for past losses. The district court did not award prejudgment interest on the amount of decedent's pain and suffering or for the plaintiff's loss of society. The district judge noted that the law does not allow for prejudgment interest for the intangible damages of pain and suffering and loss of society.

The district court, within its discretion, appropriately divided damages between past and future losses. In addition, the district court properly, within its discretion, refused to award prejudgment interest on the future damages which had been discounted to present value as of the date of the trial. See *Petition of the City of New York*, 332 F.2d at 1008 ("[t]o the extent that there are elements of future losses which are represented in the final damages prejudgment interest is, of course, not appropriate"); *Red Star Towing v. Cargo Ship "Ming Giant"*; *Hamilton v. Canal Barge Company, Inc.*, 395 F. Supp. at 992; *Petition of Marina Mercante Nicaraguense*, 248 F. Supp. at 26.

The district court erred, however, in its determination that "the law does not allow for prejudgment interest for . . . intangible damages (pain and suffering and loss of society)." Slip op. at 4. Several courts, sitting in admiralty, have awarded prejudgment interest on such intangible damages as pain and suffering, loss of society and loss of nurture and guidance (in cases where there are surviving children). In *Petition of Marina Mercante Nicaraguense*, the court divided up damages into past and future damages and awarded prejudgment interest on all past damages, including damages for pain and suffering and loss of nurture and guidance. *Id.* at 25-36. In *Hamilton v. Canal Barge Company, Inc.*, the court divided the damages awards between past and future damages and awarded prejudgment interest on all past damages. The past damages included loss of

society and loss of nurture and guidance. (The court found there was no conscious pain and suffering and, consequently, did not award anything on that element of damages.) *Id.* In *Drachenberg v. Canal Barge Company*, the court of appeals approved an award of damages that was not divided into past and future components. Prejudgment interest was granted on the entire damages award. The damages included compensation for pain and suffering and loss of society. *Id.* at 762. We cannot conclude that the law precludes an award of prejudgment interest on intangible damages.<sup>4</sup> We do not find that a court might properly conclude that an award of prejudgment interest is inappropriate under certain circumstances for only intangible damages; we merely conclude that the law does not preclude such an award. The district court erred in concluding that the law did not allow such an award.

### III.

The district court erred in its determination that it could not award prejudgment interest for pain and suffering and for past loss of society. Consequently, we reverse and remand that portion of the case denying the plaintiff prejudgment interest for pain and suffering or for past loss of society. The district court should consider if there are any peculiar circumstances precluding awards of prejudgment interest on those two aspects of the damages. If there are no peculiar circumstances, the district court should award the plaintiff prejudgment interest on all the past losses. The district court's judgment denying prejudgment interest of future losses is affirmed.

A true Copy:

Teste:

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*Clerk of the United States Court  
of Appeals for the Seventh Circuit*

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<sup>4</sup> The distinction between "liquidated" and "unliquidated" damages has not been determinative in admiralty cases. See *First National Bank v. Material Service Corp.*; *Moore-McCormack Lines v. Richardson*, 295 F.2d 583, 592 (2d Cir. 1961).

**APPENDIX B**

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS**

No. 80 5030

Evelyn Hillier, Individually and as  
Administratrix of the Estate of  
Henry Hillier, Deceased,  
Plaintiff,

v.

Southern Towing Company,  
Defendant and  
Third Party Plaintiff,  
and

United States of America,  
Third Party Defendant,  
and

No. 80 5331

In the Matter of the Complaint of  
Memphis Towing Company, a Corporation,  
for Exoneration from, or Limitation of,  
Liability.

and

No. 81 5216

In the Matter of the Complaint of  
C.F. Industries, Inc., as Bareboat  
Charterer and Owner *pro hac vice*  
of the Barge CF-105-B for Exoneration  
from or Limitation of Liability.

### ORDER

This Court having heard the evidence and the arguments of counsel, and the jury in the case of Hillier v. Southern Towing having rendered its verdict, THE COURT HEREBY FINDS AS FOLLOWS:

1. Plaintiff, Evelyn Hillier, is the widow and administratrix of the Estate of Henry Hillier, deceased. On September 27, 1979, Hillier was 23 years old and was employed by the United States Coast Guard as a marine safety inspector. At that time, he was inspecting a group of three anhydrous ammonia barges which were discharging cargo at a C.F. Industries, Inc., dock, near Pine Bend, Minnesota. These barges carry liquid anhydrous ammonia at a low temperature. While plaintiff was walking across one of the barges during the unloading process, a relief valve discharged anhydrous ammonia into the atmosphere immediately above where Henry Hillier was standing. Hillier was caught in an ammonia vapor cloud and was unable to get off the barge, though he ran toward the dock until he collapsed and died on the barge, leaving a two-year old daughter and his wife, age 24 surviving. Defendants, Memphis Towing Company and C.F. Industries, Inc. have admitted that they were negligent, that their vessels were unseaworthy, and that their negligence and the unseaworthiness of the vessels caused the death. They have also admitted that decedent was free of contributory negligence. Thus, this Court need only decide the proper amount of the judgment herein and assess the prejudgment interest. The jury, (which was advisory for the limitation proceeding) found on January 13, 1983 that the plaintiff's total damages were \$520,000.00.

2. The family's share of loss of support herein is found to be \$9,000.00 from the date of death until October 1, 1980, \$10,000.00 for the following year, October 1, 1980 to October 1, 1981, \$12,000.00 for the following year, October 1, 1981 to October 1, 1982 and \$4,000.00 from October 1, 1982 to the present, for a total of \$35,000.00 for past support. These figures

were stipulated by the parties. The Court further finds the figure of \$210,000.00 as the present value at the time of trial of the future loss of support.

3. This Court finds the reasonable value of the services which the decedent would have provided had he lived to be \$2000.00 per year. This amounts to \$6583.35 for services up to January 13, 1983 and a present cash value of future services in the amount of \$95,673.00.

4. This Court finds that the value of decedent's conscious pain and suffering is \$5,000.00.

5. This Court finds that the loss of society herein is \$172,743.65.

6. Judgment is entered in favor of claimant, Evelyn Hillier, and against Memphis Towing Company in the sum of \$520,000.00 plus pre-judgment interest in the amount of 11½ percent on only that portion of the award which includes past loss of support and past loss of services which is computed as follows:

$$\begin{aligned} 9000.00 + 2000.00 \times .115 \div 12 \times 30 \text{ mo.} &= 3162.60 \\ 12000.00 + 2000.00 \times .115 \div 12 \times 18 \text{ mo.} &= 2070.00 \\ 14000.00 + 2000.00 \times .115 \div 12 \times 6 \text{ mo.} &= 805.02 \\ 4000.00 + 583.35 \times .115 \div 12 \times 2.5 \text{ mo.} &= 109.80 \\ &\$6147.42 \end{aligned}$$

The total judgment against Memphis Towing Company is \$526,147.42 including pre-judgment interest. Judgment is entered against Memphis Towing Company in that amount.

7. Claimant's motion for pre-judgment interest on the remainder of the award is denied for the reason that this Court is of the opinion that the law does not allow for pre-judgment interest for the intangible damages (pain and suffering and loss of society) or for the future loss of support and services.

8. Judgment is rendered in favor of claimant, Evelyn Hillier, and against C.F. Industries, Inc. in the sum of \$526,147.42 including pre-judgment interest in the sum of \$6147.42 plus costs and expenses in the sum of \$13,270.25 for a total judgment in favor of claimant, Evelyn Hillier, against C.F. Industries, Inc., in the sum of \$539,417.67.

DATED: This 5 day of April, A.D. 1983.

/s/ WILLIAM L. BEATTY  
UNITED STATES DISTRICT JUDGE

NOTE: CLERK TO SEND COPIES TO ALL PARTIES.

**APPENDIX C**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**No. 80-5030**

**Evelyn Hillier, Individually, and  
as Administratrix of the Estate of  
Henry Hillier, Deceased,  
Plaintiff,**

**v.**

**Southern Towing Company,  
Defendant and Third-  
Party Plaintiff,  
and**

**United States of America,  
Third-Party Defendant.**

**and**

**No. 80-5331**

**In The Matter Of The Complaint  
Of Memphis Towing Company, A  
Corporation, For Exoneration  
From, Or Limitation Of,  
Liability.**

**and**

**No. 82-5216**

**In The Matter Of The Complaint Of  
C.F. Industries, Inc., as Bareboat  
Charterer and Owner *pro hac vice*  
of the Barge CF-105-B for Exonera-  
tion from, or Limitation of,  
Liability.**

**STIPULATION REGARDING LIABILITY**

Come now C.F. Industries, Inc., Southern Towing Company and Memphis Towing Company, by their attorneys, and stipulate that C.F. Industries, Inc. and either Southern Towing Company or Memphis Towing Company (whichever is found to be the operator of the M/V BAXTER SOUTHERN, a fact which Memphis Towing Company admits but Southern Towing Company denies and which must therefore later be determined at trial) are liable for the death of decedent Henry Hillier and are willing to pay a reasonable amount of damages to the decedent's personal representative, Evelyn Hillier, to be determined at trial. If trial should result in a judgment in excess of the respective limitation funds, C.F. Industries, Inc. and Memphis Towing Company reserve the right to introduce evidence at a subsequent hearing in support of their claims for limitation of liability.

C. F. INDUSTRIES, INC.

By Its Attorneys

SOUTHERN TOWING  
COMPANY

By Its Attorneys

MEMPHIS TOWING  
COMPANY

By Its Attorneys

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**SUPPLEMENTAL STIPULATION REGARDING  
LIABILITY**

Come now Southern Towing Company and Memphis Towing Company, by their attorneys, and stipulate they are liable for the death of decedent Henry Hillier and are willing to pay a reasonable amount of damages to the decedent's personal representative, Evelyn Hillier, to be determined at trial. If trial should result in a judgment in excess of Memphis Towing Company's limitation fund, Memphis Towing Company reserves the right to introduce evidence at a subsequent hearing in support of its claim for limitation of liability.

**SOUTHERN TOWING  
COMPANY**

**By Its Attorneys**

**MEMPHIS TOWING  
COMPANY**

**By Its Attorneys**

